

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2008 APR 15 PM 3 25

PATRICK E. DUFFY, CLERK

DEPUTY CLERK

GLEN and LORI SMITH, Husband
and Wife,

Plaintiffs,

vs.

WILLIAM C. EARHART COMPANY,
INC., an Oregon corporation,

Defendants.

CV-07-143-BLG-RFC-CSO

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On March 7, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation on Defendant's Motion to Dismiss (*Doc. 3*). *Doc. 10*. Magistrate Judge Ostby recommends the motion be granted to the extent that claims are maintained against Earhart pursuant to 29 U.S.C. § § 1132(a)(1)(B), (a)(2), (a)(3) and (c). However, it is also recommended that Plaintiffs be afforded leave to amend the Complaint.¹

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the March 7, 2008 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to

¹Plaintiffs' First Amended Complaint was filed on March 25, 2008. *Doc. 11*. It appears the First Amended Complaint cures many of the defects in the original complaint. To that extent, Defendant's motion to dismiss is arguably moot.

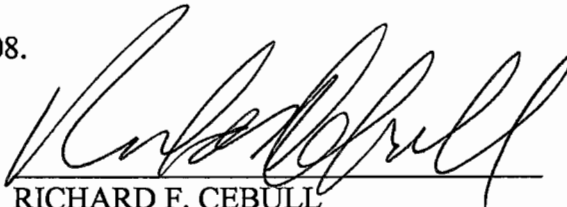
review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (*Doc. 3*) is **GRANTED** to the extent Plaintiff's Complaint states claims against Earhart pursuant to 29 U.S.C. § § 1132(a)(1)(B), (a)(2), (a)(3) and (c).

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 15th day of April, 2008.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE